Court Asked to Clarify Authorizing of Wiretaps

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The Justice Department, confronted by a possible washout of hundreds of narcotics, gambling and other major criminal cases has asked the Supreme Court to rule that the Attorney General's signature is not needed when the government seeks a court's permission to tap telephones.

In a move to settle conflicting lower court rulings on the question, the department asked for a high court hearing on a decision by the Fourth U.S. Circuit Court of Appeals that suppressed wiretap evidence the government wants to use in a narcotics trial in Baltimore.

The Fourth Circuit decision conflicts with two decisions by the Second Circuit in Manhattan won by the government. Solicitor General Erwin N. Griswold said he was dropping previous objections to review of those cases and urging a showdown in all three cases.

However, the showdown probably won't come until the high court's fall term because a decision to hear the cases ordinarily would not be made until March—too late to be fully aired during the term ending in June.

As a result, a final ruling isn't expected for about a year, during which uncertainty will hang over most of the 500 federal wiretap cases started between 1969 and 1971.

At issue is whether a provision of the 1968 federal crime control act, which permits court-approved wiretapping, should be strictly construed. It says that only the Attorney General or a specially designated assistant attorney general may authorize government applications for warrants.

When John N. Mitchell held the top department post, he declined to designate an assistant attorney general but he did develop a practice of letting his special assistant, Sol Lindenbaum, sign authorizations in his absence.

When those wiretap orders were challenged, the givernment argued that Lindenbaum was Mitchell's "alter ego," carrying out the Attorney General's personal wiretap policy.

But the Fourth Circuit held that Congress, "to allay the profound concern" over intrusions into privacy, meant to fix heavy personal responsibility on the Attorney General and to insist that he name a presidential appointee, not a personal aide, as his alter ego for wiretap matters.

Griswold's petition called this a "highly technical" interpretation of the 1968 law that could cause "a major disruption of the government's efforts to control organized crime."

The solicitor general said the department has changed its procedures so that current wiretap applications are not jeopardized, but added that the government feared loss of evidence against hundreds of individuals previously charged.

Griswold said he was prepared to argue that even if the government is wrong about the legal issue, suppression of wiretap evidence is too drastic a remedy. The court of appeals said it was obliged to suppress the evidence lest it condone future departures from the law.